

(3) Each is adequately financed as a separate unit in light of normal obligations reasonably foreseeable in a business of its size and character;

(4) Each is held out to the public as a separate enterprise; and

(5) Unless the parent savings association has guaranteed a loan to the subordinate organization, all borrowings by the subordinate organization indicate that the parent is not liable.

(b) OTS regulations that apply both to savings associations and subordinate organizations shall not be construed as requiring a savings association and its subordinate organizations to operate as a single entity.

§ 559.11 What notices are required to establish or acquire a new subsidiary or engage in new activities through an existing subsidiary?

When required by section 18(m) of the Federal Deposit Insurance Act, a savings association ("you") must file a notice ("Notice") in accordance with § 516.1(c) of this chapter at least 30 days before establishing or acquiring a subsidiary or engaging in new activities in a subsidiary. The Notice must contain all of the information the Federal Deposit Insurance Corporation (FDIC) requires under 12 CFR 362.15. Providing OTS with a copy of the notice you file with the FDIC will satisfy this requirement. If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before establishing or acquiring the subsidiary or engaging in new activities in the subsidiary.

[61 FR 66571, Dec. 18, 1996, as amended at 64 FR 69185, Dec. 10, 1999]

§ 559.12 How may a subsidiary of a savings association issue securities?

(a) A subsidiary may issue, either directly or through a third party intermediary, any securities that its parent savings association ("you") may issue. The subsidiary must not state or imply that the securities it issues are covered by federal deposit insurance. A subsidiary may not issue any security the payment, maturity, or redemption of which may be accelerated upon the

condition that you are insolvent or have been placed into receivership.

(b) You must file a notice with OTS in accordance with § 559.11 of this part at least 30 days before your first issuance of any securities through an existing subsidiary or in conjunction with establishing or acquiring a new subsidiary. If OTS notifies you within 30 days that the notice presents supervisory concerns or raises significant issues of law or policy, you must receive OTS's prior written approval before issuing securities through your subsidiary.

(c) For as long as any securities are outstanding, you must maintain all records generated through each securities issuance in the ordinary course of business, including a copy of any prospectus, offering circular, or similar document concerning such issuance, and make such records available for examination by OTS. Such records must include, but are not limited to:

(1) The amount of your assets or liabilities (including any guarantees you make with respect to the securities issuance) that have been transferred or made available to the subsidiary; the percentage that such amount represents of the current book value of your assets on an unconsolidated basis; and the current book value of all such assets of the subsidiary;

(2) The terms of any guarantee(s) issued by you or any third party;

(3) A description of the securities the subsidiary issued;

(4) The net proceeds from the issuance of securities (or the pro rata portion of the net proceeds from securities issued through a jointly owned subsidiary); the gross proceeds of the securities issuance; and the market value of assets collateralizing the securities issuance (any assets of the subsidiary, including any guarantees of its securities issuance you have made);

(5) The interest or dividend rates and yields, or the range thereof, and the frequency of payments on the subsidiary's securities;

(6) The minimum denomination of the subsidiary's securities; and

(7) Where the subsidiary marketed or intends to market the securities.

§ 559.13

(d) Sales of the subsidiary's securities to retail customers must comply with § 545.74 of this chapter.

§ 559.13 How may a savings association exercise its salvage power in connection with a service corporation or lower-tier entities?

(a) In accordance with this section, a savings association ("you") may exercise your salvage power to make a contribution or a loan (including a guarantee of a loan made by any other person) to your service corporation or lower-tier entity ("salvage investment") that exceeds the maximum amount otherwise permitted under law or regulation. You must notify OTS at least 30 days before making such a salvage investment. This notice must demonstrate that:

(1) The salvage investment protects your interest in the service corporation or lower-tier entity;

(2) The salvage investment is consistent with safety and soundness; and

(3) You considered alternatives to the salvage investment and determined that such alternatives would not adequately satisfy paragraphs (a)(1) and (a)(2) of this section.

(b) If OTS notifies you within 30 days that the Notice presents supervisory concerns, or raises significant issues of law or policy, you must apply for and receive OTS's prior written approval in accordance with § 516.1(c) of this chapter before making a salvage investment.

(c) If your service corporation or lower-tier entity is a GAAP-consolidated subsidiary, your salvage investment under this section will be considered an investment in a subsidiary for purposes of part 567 of this chapter.

PART 560—LENDING AND INVESTMENT

Sec.

560.1 General.

560.2 Applicability of law.

560.3 Definitions.

Subpart A—Lending and Investment Powers for Federal Savings Associations

560.30 General lending and investment powers of Federal savings associations.

12 CFR Ch. V (1–1–01 Edition)

560.31 Election regarding categorization of loans or investments and related calculations.

560.32 Pass-through investments.

560.33 Late charges.

560.34 Prepayments.

560.35 Adjustments to home loans.

560.36 De minimis investments.

560.37 Real estate for office and related facilities.

560.40 Commercial paper and corporate debt securities.

560.41 Leasing.

560.42 State and local government obligations.

560.43 Foreign assistance investments.

560.50 Letters of credit and other independent undertakings—authority.

560.60 Suretyship and guaranty.

Subpart B—Lending and Investment Provisions Applicable to all Savings Associations

560.93 Lending limitations.

560.100 Real estate lending standards; purpose and scope.

560.101 Real estate lending standards.

560.110 Most favored lender usury preemption.

560.120 Letters of credit and other independent undertakings to pay against documents.

560.121 Investment in State housing corporations.

560.130 Prohibition on loan procurement fees.

560.160 Asset classification.

560.170 Records for lending transactions.

560.172 Re-evaluation of real estate owned.

Subpart C—Alternative Mortgage Transactions

560.210 Disclosures for variable rate transactions.

560.220 Alternative Mortgage Parity Act.

AUTHORITY: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

SOURCE: 61 FR 50971, Sept. 30, 1996, unless otherwise noted.

§ 560.1 General.

(a) *Authority and scope.* This part is being issued by OTS under its general rulemaking and supervisory authority under the Home Owners' Loan Act (HOLA), 12 U.S.C. 1462 *et seq.* Subpart A of this part sets forth the lending and investment powers of Federal savings associations. Subpart B of this part contains safety-and-soundness based lending and investment provisions applicable to all savings associations.